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Attorneys for Defendant Merchant Industry LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

ABANTE ROOTER AND PLUMBING,

INC., a California corporation, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

UNLOCKED BUSINESS STRATEGIES,
INC., et al.,

Defendants.

Case No. 4:19-cv-07966-JST

**DECLARATION OF FRANK KOTLAR IN
SUPPORT DEFENDANT MERCHANT
INDUSTRY LLC'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(1)
AND 12(b)(2)**

Date: In Chambers
Time: In Chambers
Before: The Hon. Jon S. Tigar
Ctrm: 6, 2nd Flr.

1 I, Frank Kotlar, declare as follows:

2 1. I am the Chief Financial Officer of Defendant Merchant Industry LLC
3 ("Merchant Industry"). Unless otherwise stated, I have personal knowledge of the facts
4 stated herein.

5 2. Merchant Industry is a New York limited liability company with a principal
6 place of business in New York. It does not have any offices, employees, mailing
7 addresses, phone numbers, real estate, licenses, or computer servers in California.

8 3. I am also a New York resident, and I do not own any California assets,
9 California bank accounts, or California property.

10 4. Unlocked Business Strategies, Inc. and/or Thomas Costa (collectively,
11 "UBS") has never been an affiliate of Merchant Industry, and Merchant Industry has never
12 authorized UBS to send any emails or make any calls on Merchant Industry's behalf.
13 There has never been any agreement between Merchant Industry and UBS to engage in
14 the activity alleged in the complaint. In fact, Merchant Industry did not receive the benefit
15 of any calls or emails sent by UBS, direct any calls to be made or emails to be sent by
16 UBS, or ratify the calls, emails, or other actions of UBS. UBS and Merchant Industry do
17 not share common ownership. Merchant Industry does not exercise control over UBS,
18 and there is no legal relationship at all between the companies. Merchant Industry knows
19 of no relationship between the other Defendants and any authorized reseller or affiliate of
20 Merchant Industry.

21 5. Merchant Industry has and had no contractual relationship, or other
22 agreement, with the other Defendants in this action, and thus other Defendants were not
23 in any way authorized to offer the services of Merchant Industry; to promote or market the
24 services of Merchant Industry; or to use Merchant Industry's trademarks in any way.

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1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

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4 Executed on Sep 18, 2020

Frank Kotlar

Frank Kotlar (Sep 18, 2020 15:40 EDT)

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